

ORIGINAL

Official Transcript of Proceedings

IN SENATE

AND HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN SENATE

OFFICIAL TRANSCRIPT

OF PROCEEDINGS

IN SENATE

AND HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN SENATE

OFFICIAL TRANSCRIPT

OF PROCEEDINGS

IN SENATE

AND HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

IN SENATE

OFFICIAL TRANSCRIPT

OF PROCEEDINGS

IN SENATE

AND HOUSE OF REPRESENTATIVES

OF THE UNITED STATES OF AMERICA

1

BEFORE THE

2

POSTAL RATE COMMISSION

3

- - - - - X

4

In the Matter of: :

5

EXPERIMENTAL "RIDE-ALONG" : Docket No. MC2000-1

6

CLASSIFICATION CHANGE :

7

FOR PERIODICALS :

8

- - - - - X

9

10

Third Floor Hearing Room

11

Postal Rate Commission

12

1333 H Street, N.W.

13

Washington, D.C. 20268

14

15

Volume I

16

Thursday, October 28, 1999

17

The above-entitled matter came on for pre-hearing

18

conference, pursuant to notice, at 11:20 a.m.

19

20

BEFORE:

21

HON. GEORGE OMAS, COMMISSIONER, PRESIDING

22

HON. EDWARD J. GLEIMAN, CHAIRMAN

23

HON. DAN COVINGTON, COMMISSIONER

24

HON. W.H. "TREY" LeBLANC, III, VICE CHAIRMAN

25

HON. RUTH GOLDWAY, COMMISSIONER

ANN RILEY &amp; ASSOCIATES, LTD.

Court Reporters

1025 Connecticut Avenue, NW, Suite 1014

Washington, D.C. 20036

(202) 842-0034

## 1 APPEARANCES:

2 On Behalf of United States Postal Service:

3 Scott Reiter, Esq.

4 Susan Duchan, Esq.

5 U.S. Postal Service

6 475 L'Enfant Plaza, SW

7 Washington, D.C. 20260

8 On Behalf of Advertising Mail Marketing Association:

9 Frank Wiggins, Esq.

10 On Behalf of American Business Press:

11 David Straus, Esq.

12 Thomas Coburn

13 700 14th Street, Suite 900

14 Washington, D.C. 20005

15 On Behalf of Association of American Publishers:

16 John Profisney, Esq.

17 On Behalf of Cox Consumer Sampling and Cox Target Media:

18 John Miles, Esq.

19 William J. Olson, P.C.

20 8180 Greensboro Drive

21 Suite 1070

22 McLean, VA 22102

23 On Behalf of Imagine Media:

24 Peter Moore, Esq.

25 On Behalf of Magazine Publishers of America:

Ann Noble Irvin, Esq.

On Behalf of Mail Advertising Service Association  
International:

Carlos Angulo, Esq.

Zuckerman, Spaeder, Goldstein, Taylor &amp; Kolker

1201 Connecticut Avenue, NW

Washington, D.C. 20036

On Behalf of Marietta Corporation:

Jim Schlesinger, Esq.

On Behalf of McGraw-Hill Companies:

Jim Burgio, Esq.

On Behalf of National Newspaper Association:

Sandra Rush, Esq.

ANN RILEY &amp; ASSOCIATES, LTD.

Court Reporters

1025 Connecticut Avenue, NW, Suite 1014

Washington, D.C. 20036

(202) 842-0034

1 APPEARANCES: [cont.]

2 On Behalf of Newspaper Association of America:  
3 Bill Baker, Esq.  
4 529 14th Street, NW  
5 Washington, D.C.

6 On Behalf of Office of the Consumer Advocate:  
7 Rand Costich, Esq.  
8 Ted Gerarden  
9 U.S. Postal Rate Commission  
10 Washington, D.C. 20268

11 On Behalf of Time Warner, Inc.:  
12 Timothy Keegan, Esq.  
13 John Burzio, Esq.  
14 Burzio & McLaughlin  
15 1054 31st Street, NW  
16 Suite 540  
17 Washington, D.C

18 On Behalf of Alliance of Nonprofit Mailers:  
19 Neal Denton, Esq.

20

21

22

23

24

25

26

27

28

29

30

31

32

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

## P R O C E E D I N G S

[11:20 a.m.]

COMMISSIONER OMAS: I am George Omas and I will serve as Presiding Officer during this case. With me today is Chairman Gleiman, Commissioner Danny Covington, and Commissioner Goldway and Commissioner LeBlanc.

Before proceeding to subsequent matters I will ask counsel present here today to identify themselves for the record. First, the Postal Service.

MR. REITER: I am Scott Reiter for the Postal Service. With me is Susan <sup>Duchek</sup>~~Duchan~~.

COMMISSIONER OMAS: Advertising Mail Marketing Association.

MR. WIGGINS: Frank Wiggins, Mr. Presiding Officer for the AAMA.

COMMISSIONER OMAS: American Business Press.

MR. STRATAS: David Straus for the American Business Press.

COMMISSIONER OMAS: Association of American Publishers.

<sup>Przypyszny</sup>  
MR. ~~PROFISNEY~~: John <sup>Przypyszny</sup>~~Profisney~~ for Association of American Publishers.

COMMISSIONER OMAS: Classroom Publishers Association.

[No response.]

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 COMMISSIONER OMAS: Cox Consumer Sampling.

2 MR. MILES: John Miles for Cox Consumer Sampling  
3 and also for Cox Target Media.

4 COMMISSIONER OMAS: Thank you. Image Media,  
5 Incorporated.

6 MR. MOORE: Peter Moore for Imagine Media.

7 COMMISSIONER OMAS: Excuse me, Imagine.  
8 Magazine Publishers of America.

9 MS. IRVIN: Ann Noble Irvin for Magazine  
10 Publishers of America.

11 COMMISSIONER OMAS: Mail Advertising Service  
12 Association International.

13 MR. ANGULO: Carlos Angulo for MASA.

14 COMMISSIONER OMAS: Marietta Corporation.

15 MR. SCHLESINGER: Jim Schlesinger for Marietta  
16 Corporation.

17 COMMISSIONER OMAS: McGraw-Hill.

18 MR. <sup>Burgin</sup> ~~BURGIO~~: <sup>Tim Burgin</sup> ~~Jim Burgio~~ for the McGraw-Hill  
19 Companies.

20 COMMISSIONER OMAS: National Newspaper  
21 Association.

22 MS. RUSH: <sup>Tanya</sup> ~~Sandra~~ Rush for the National Newspaper  
23 Association.

24 COMMISSIONER OMAS: Newspaper Association of  
25 America.

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 MR. BAKER: Bill Baker for the NAA.

2 COMMISSIONER OMAS: Office of the Consumer  
3 Advocate.

4 MR. COSTICH: Rand Costich for OCA. Also with me  
5 is Ted Gerarden, Director of OCA.

6 COMMISSIONER OMAS: David B. Popkin.

7 [No response.]

8 COMMISSIONER OMAS: Time Warner, Inc.

9 MR. KEEGAN: Timothy Keegan for Time-Warner, Inc.  
10 Also appearing will be my partner John Burzio.

11 COMMISSIONER OMAS: Last night we received a late  
12 notice of intervention, a motion for acceptance of that  
13 notice, from the Alliance of Nonprofit Mailers.

14 Does any participant oppose the motion for leave  
15 to intervene out of time by the Alliance of Nonprofit  
16 Mailers?

17 [No response.]

18 COMMISSIONER OMAS: Hearing no objection, I will  
19 grant that motion.

20 Is there a representative of the Alliance of  
21 Nonprofits present here this morning?

22 MR. DENTON: Neal Denton, representing the  
23 Alliance of Nonprofit Mailers.

24 COMMISSIONER OMAS: Is there anyone else that I  
25 have missed?

1 [No response.]

2 COMMISSIONER OMAS: All right, moving right along,  
3 Commission Order Number 1264 gave notice of this request and  
4 established today's prehearing conference. It also  
5 appointed the Director of the Office of Consumer Advocate as  
6 a settlement coordinator.

7 A settlement conference was scheduled for  
8 yesterday afternoon and the first order of business today is  
9 to receive a report of the progress that has been made  
10 toward achieving a settlement in that case.

11 Mr. Gerarden, would you please give us a report on  
12 that?

13 MR. GERARDEN: Yes, Mr. Presiding Officer.

14 Many of the parties who appear today were present  
15 at the technical and settlement conference yesterday  
16 afternoon. The parties represented at that conference were  
17 the American Business Press, Advertising Mail and Marketing  
18 Association, Cox Consumer Sampling and Cox Target Media,  
19 Imagine Media, Magazine Publishers of America, Mail  
20 Advertising Service Association International, Marietta  
21 Corporation, National Newspaper Association, Time-Warner,  
22 the Postal Service and the Office of Consumer Advocate.

23 A full discussion was held among those parties  
24 subject of course to confidentiality in the process of  
25 discussing the issues and attempting to explore settlement.

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034



1 Good progress was made, however, with agreement among the  
2 parties to have some follow-up discussions.

3 What I would like to do at this time is to submit  
4 to the bench some suggested dates that the parties have  
5 discussed, both yesterday afternoon and this morning for  
6 additional steps, additional procedures in the case to  
7 attempt to move the case to a resolution as early as  
8 possible, and if I may have leave to approach the bench.

9 COMMISSIONER OMAS: Yes.

10 [Pause.]

11 MR. GERARDEN: The consensus among the parties was  
12 that the best opportunity to move this case forward  
13 expeditiously would be to set some dates that would initiate  
14 and bring about prompt discovery. Two parties already have  
15 commenced discovery and there is some indication that there  
16 may be some additional interest in discovery, and so the  
17 parties recommend that the Commission adopt a date of  
18 November 4th, 1999 as the date for initiation of discovery  
19 by any parties that have not yet initiated discovery.

20 The parties intend to hold a second settlement  
21 conference on November 19th, at 2:00 p.m., here at the  
22 Commission. There may be some informal discussions among  
23 the parties prior to that time that need not be the subject  
24 of a date set by the Commission.

25 The parties recommend that November 24 be set as a

1 date for end of discovery subject only to the usual or  
2 potential clarification of the follow-up questions related  
3 to the discovery submitted by November 24th and the parties  
4 will consult with one another and will either reach a  
5 conclusion in the case that would permit the parties to  
6 submit a joint stipulation and agreement or the Office of  
7 Consumer Advocate in consultation with the parties will  
8 submit a report to the Commission on the status of  
9 settlement discussions by December 7th.

10 Now in the eventuality that the parties are not  
11 able to come to a complete resolution of all issues in the  
12 case, the report will indicate on what issues consensus has  
13 been reach and what matters may require further proceedings  
14 and for that purpose the parties recommend that subject to  
15 the Commission's calendar that the Commission set the date  
16 of December 14 as a date for hearings on the evidence  
17 submitted by the Postal Service.

18 At that time also if further evidence is required  
19 from any Intervenors, dates could be set for the submission  
20 of that evidence, hearings on that evidence as well, with  
21 the consensus of the parties and certainly of course the  
22 parties can speak for themselves this morning that adoption  
23 of these dates would provide a framework for the parties to  
24 move forward promptly with discovery and be able to report  
25 to the Commission as early as possible when the case can be

1 submitted for a prompt resolution or how the issues can be  
2 narrowed and further procedures be as limited as possible to  
3 reach an expedited result to the case.

4 COMMISSIONER OMAS: Thank you, Mr. Gerarden and  
5 the bench will be happy to take that under advisement.

6 Does any other participant have anything to add to  
7 Mr. Gerarden's statement?

8 [No response.]

9 COMMISSIONER OMAS: Well, thank you.

10 Before continuing, I want to clarify for the  
11 record that points raised by participants in their notice of  
12 intervention or in their response to the Postal Service  
13 motions were explored during the settlement conference. I  
14 recognize that you have already gone over some of these  
15 points but I would like to assure that participants'  
16 concerns were raised at the conference and both the Office  
17 of the Consumer Advocate and the Mail Advertising  
18 Association suggested that additional information should be  
19 collected during the experiment. Were those concerns raised  
20 during the settlement conference?

21 MR. GERARDEN: Mr. Presiding Officer, yes.  
22 Without of course going into the content of the discussion I  
23 certainly can represent on the record that the parties had  
24 considerable discussion on those issues.

25 COMMISSIONER OMAS: That was Ted Gerarden. Please

1 remember to identify yourselves each time you speak. Thank  
2 you.

3 Other potential issues included the impact on the  
4 content of materials sent in periodical subclasses and  
5 whether implementing regulations might unfairly distinguish  
6 between different advertising mediums. Were those issues  
7 raised at the settlement conference?

8 MR. GERARDEN: Ted Gerarden again, Mr. Presiding  
9 Officer.

10 Yes, they were, and it is possible that this  
11 subject may be part of the additional discovery that parties  
12 are conducting and may conduct.

13 COMMISSIONER OMAS: Were there any issues deferred  
14 to a future conference?

15 MR. GERARDEN: Ted Gerarden again, Mr. Presiding  
16 Officer.

17 All parties had an opportunity to raise issues  
18 that they were interested in and discussed them among the  
19 parties present at the settlement conference. I do not  
20 believe that any of the parties present at the conference  
21 yesterday reserved issues or withheld issues from  
22 discussion.

23 COMMISSIONER OMAS: My reading of the pleadings  
24 filed in response to the Postal Service motion for waiver of  
25 certain filing rules is that no participant opposes that

1 request. Has any participant in here today changed its view  
2 as a result of the settlement conference and now opposes  
3 granting partial waivers of filing rules?

4 [No response.]

5 COMMISSIONER OMAS: In a similar vein, has any  
6 participant determined to oppose the treatment of this  
7 request under the Commission's rules <sup>For</sup> ~~or~~ requests involving  
8 experimental changes?

9 [No response.]

10 COMMISSIONER OMAS: Thank you. Next I would like  
11 to turn to discovery. The OCA and the Cox Companies have  
12 already filed some discovery requests, as we have been told.  
13 The Commission did not publish proposed special rules of  
14 practice for this case. Among other things, special rules  
15 often involve reducing the time for filing objections and  
16 responses to discovery.

17 In this case the Postal Service has requested that  
18 the Commission attempt to expedite its decision. Under the  
19 circumstances I assume that the Postal Service will have no  
20 objection to providing answers to discovery requests on a  
21 short schedule.

22 Is the Postal Service willing to provide answers  
23 or objections to discovery requests within 10 days? Please  
24 identify yourself.

25 MR. REITER: Scott Reiter for the Postal Service.

1 Yes, we are willing to do that as long as the  
2 Commission recognizes that on occasion that is not always  
3 possible due to scheduling issues or -- you want me to speak  
4 up, Mr. Chairman? Okay.

5 The Postal Service is certainly willing to turn  
6 around those answers and objections as quickly as we can and  
7 we will aim for the 10 days that you suggest. I was merely  
8 saying that on occasion that becomes problematic with such a  
9 short deadline but we will try to do whatever we can.

10 I did inform Mr. Gerarden earlier that the two  
11 sets that he filed under the 10 days would be due today and  
12 that we will not be able to answer those until Monday, and  
13 he told me there is no objection to that, so we will be  
14 asking the Commission to accept those two days late.

15 COMMISSIONER OMAS: All right, thank you.

16 We will expect the Postal Service to respond to  
17 discovery within 10 days.

18 If any other participants submit evidence, I would  
19 expect them to meet the same standards.

20 Since participants are actively pursuing  
21 settlement I do not see the need for additional special  
22 rules of practice at this time. However, I will remain open  
23 to suggestions of that nature from participants at any time.

24 Mr. Gerarden, I know this is a little redundant,  
25 but have additional settlement discussions been scheduled?

1 MR. GERARDEN: Yes, Mr. Presiding Officer. The  
2 parties are planning on meeting here at the office of the  
3 Commission on November 19 at 2:00 p.m.

4 COMMISSIONER OMAS: I am glad the participants  
5 seem to be working hard to resolve outstanding areas of  
6 disagreement. The Commission encourages settlement efforts  
7 and we want participants to have an ample opportunity to  
8 resolve issues informally. I just have to remind you that  
9 we are reviewing a request to initiate an experiment. Under  
10 Commission rules we intend to issue a decision by the end of  
11 February.

12 For this reason, we will not be able to allow a  
13 lengthy period for discovery after the completion of  
14 settlement discussions. I urge participants to gain a  
15 complete understanding of the Postal Service's proposal  
16 either formally or informally without delay.

17 For those of you who have not already done so,  
18 please fill out an appearance form and hand it to the  
19 Reporter -- who is not here.

20 [Laughter.]

21 COMMISSIONER OMAS: If you are leaving today --  
22 well, we could give it to <sup>Cy</sup>~~SI~~. He will be happy to accept  
23 it. They are available from the Reporter or <sup>Cy</sup>~~SI~~ and on the  
24 side table behind Postal Service counsel.

25 Anyone interested in obtaining a transcript of

1 today's prehearing conference or any official Commission  
2 proceedings in this case should make arrangements directly  
3 with the reporting company -- who is absent today -- Ann  
4 Riley & Associates, Limited. An order form is available  
5 again on the bottom half of the appearance form.  
6 Transcripts are also available on computer disk. Please  
7 fill out an order form if you wish transcripts either in  
8 hard copy or diskettes. I am sure that <sup>Cy</sup>~~St~~ will be happy to  
9 give it to you this afternoon.

10 Anyone needing to make additional arrangements  
11 that cannot be dealt with today through the Reporter, please  
12 call the company, (202) 842-0034. I don't know why they  
13 didn't show up.

14 I also want to remind counsel that it will help  
15 the Reporter greatly if you identify yourself for the record  
16 the first time you speak on any day.

17 The Commission has maintained the same hearing  
18 procedure throughout a number of cases and many of the  
19 participants in this case are familiar with these practices.  
20 If the hearings do become necessary, they will begin at 9:30  
21 a.m. and will proceed with a 10-minute morning break at  
22 approximately 10:45 a.m., a 75-minute lunch break at  
23 approximately 12:15 and afternoon breaks as necessary until  
24 the scheduled witnesses have been heard.

25 The Commission will again maintain a recorded

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034



1 telephone message to announce the hearing schedule. The  
2 schedule will be updated during the hearing breaks so that  
3 you can learn how cross examination is progressing. Those  
4 times will be approximately 11:00, 1:00, and 3:15. The  
5 telephone number is (202) 789-6874.

6 Additionally, as most of you are aware, the  
7 Commission's home page on the World Wide Web will provide  
8 access to all documents issued by the Commission and to most  
9 documents submitted by the participants. It is our goal to  
10 have all documents available and it is appreciated when  
11 materials are submitted with a copy in electronic form.

12 Also, we will continue our practice of providing a  
13 complete daily list of all documents filed with the  
14 Commission. The address for our homepage is [www.prc.gov](http://www.prc.gov).

15 Now do any of the participants here today have an  
16 issue to discuss at this time?

17 [No response.]

18 COMMISSIONER OMAS: There being none, I would like  
19 to thank you all and I will take your written and oral  
20 comments under advisement and discuss them with my  
21 colleagues. A future procedural schedule will be issued  
22 next week.

23 This prehearing conference is adjourned. Thank  
24 you very much.

25 [Whereupon at 11:40 a.m., the pre-hearing

1 conference was concluded.]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034